



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Reconsideration of B-212529, May 31, 1984

File: B-212529

Date: June 8, 1987

DIGEST

On reconsideration, decision in B-212529, May 31, 1984, is affirmed. The Nuclear Regulatory Commission (NRC) may not reimburse the Institute of Electrical and Electronic Engineers (IEEE) for expenses the IEEE incurred in preparing to carry out a laboratory accreditation program which the NRC later abandoned before performance was completed. The doctrine of quantum meruit is inapplicable because the Government did not receive a benefit from the activities of IEEE.

DECISION

This decision is in response to a request from Nunzio J. Palladino, Chairman of the Nuclear Regulatory Commission (NRC), for reconsideration of our decision B-212529, May 31, 1984, in which we concluded that the NRC had no authority to reimburse the Institute of Electrical and Electronic Engineers (IEEE) for expenses the IEEE incurred in preparing to carry out an agreement with the NRC which the NRC later failed to implement. We have considered carefully the information in Chairman Palladino's request, as well as material submitted by the IEEE. Nonetheless, we affirm our original decision.

BACKGROUND

The facts of this case are set out fully in our earlier decision, and, accordingly, we will not repeat them in detail here. Briefly, in 1977, the NRC considered revising its qualification standards for nuclear power plant equipment. To that end, the NRC asked the IEEE in August 1980 to develop standards for accreditation of laboratories which would test such equipment. The NRC and the IEEE executed a written agreement, effective September 30, 1981, under which the IEEE agreed to be responsible for establishing and conducting the laboratory accreditation program. The NRC

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agreed, for its part, to issue a rule endorsing the accreditation program, as drafted by the IEEE, and requiring its use after January 1, 1983. The NRC, however, did not promise to reimburse the IEEE for its expenses in connection with the accreditation program or to pay it any compensation for its work. After the parties signed the agreement, the IEEE rented office space, hired staff, and incurred other expenses in preparing to develop the accreditation program. In accordance with staff recommendations, however, the NRC on May 13, 1983 informed the IEEE that it no longer intended to issue a rule regarding laboratory accreditation and that it was terminating their agreement.

Our 1984 decision was in response to a request from the NRC for a decision on whether the NRC properly could reimburse the IEEE for the expenses the latter incurred in developing the abandoned accreditation program. NRC put forth several theories under which reimbursement possibly could have been made. All were rejected by this Office. We concluded that the NRC could not be held liable under a theory of breach of contract, because an agreement by an administrative body to promulgate a rule as drafted by an outside benefiting party violates the Administrative Procedures Act, 5 U.S.C. § 553, and is also against public policy and therefore unenforceable. Further, we concluded that the NRC was not liable under a theory of promissory estoppel because the NRC reasonably should not have expected that its promises under the agreement would induce the IEEE to incur the substantial expenses it did. We also concluded that the IEEE could not be compensated under a theory of quantum meruit because the "Commission did not benefit from the activities for which the Institute [was] seeking payment." We also decided that NRC could not reimburse IEEE under the authority of Public Law 85-804, 50 U.S.C. §§ 1431-1435, or under a theory that reimbursement was necessary to preserve NRC's credibility.

ANALYSIS

We conclude that there is nothing in the latest submission of the NRC, or in the materials submitted by the IEEE, which leads us to conclude that our 1984 decision in this case either was wrong or should be modified. The IEEE, in essence, abandons its attempt to enforce the original contract and, together with the NRC, raises again the possibility of reimbursement under a theory of quantum meruit. That theory is based on the principle that even though the Government is not required to pay contractors or others who provide services without a binding contract, equity requires that the Government not gain a windfall at the expense of the performing party. 64 Comp. Gen. 395, 405 (1985); 63 Comp. Gen. 579, 584 (1984). Both the courts and

the Comptroller General have recognized that in appropriate circumstances, payment may be made for such services rendered on a quantum meruit basis. See B-213489, March 13, 1984.

Before this Office will authorize a quantum meruit payment, however, we must make a threshold determination that the goods and services would have been a permissible procurement had a proper contract been executed. We must then find that (1) the Government received and accepted a benefit; (2) the contractor acted in good faith; and (3) the amount claimed represents a reasonable value for the benefit received. 64 Comp. Gen. 395, 405 (1985); 63 Comp. Gen. 579, 584 (1984). We will assume that acquisition of the IEEE's work product would have been a permissible procurement had NRC elected to contract to pay for it. However, the record does not demonstrate that any benefit was received and accepted by the Government in this case. It therefore is not necessary to consider the other elements which would be required to justify a quantum meruit recovery.

On the question of benefit, both NRC and the IEEE have brought to our attention a quantity of work product material, which was delivered by the IEEE to NRC. (At least some of the work product was delivered after the NRC's decision not to proceed with the accreditation process and after our earlier decision in this case.) In any event, because the NRC did not go forward and does not intend to go forward with the laboratory accreditation program, the work product of the IEEE is apparently of no value to the NRC. An internal NRC memorandum dated December 18, 1985 by the Executive Director for Operations concludes,

"The staff has reviewed the [IEEE work product] and has been unable to identify any beneficial application, nor would we expect to in the future, given that the accreditation process has not gone forward. However, * * * this work product would have had value to the NRC had this process gone forward."

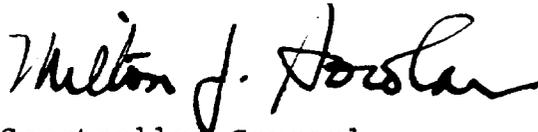
Nowhere in Chairman's Palladino's request for reconsideration does he indicate that the NRC received a benefit from the activities of the IEEE. The Chairman indicates instead that, as a result of the IEEE's activities, "the valuable option was created that, had the Commission decided to go ahead with the plan, it could have executed the accreditation program." The materials available to this Office indicate, however, that this "valuable option" is, in fact, of no value to the NRC, because the NRC has no intention of going forward with the accreditation program. The fact that the activities of the IEEE might have benefited the NRC is

not sufficient to satisfy the requirements for quantum merit reimbursement. That theory is based on the abhorrence of an "unjust enrichment." Here, the NRC has not been enriched by the activities of the IEEE.

Alternatively, IEEE has argued that its work product provided information which was of substantial value to NRC in devising and implementing the procedure it ultimately decided to implement in place of laboratory accreditation. Thus, IEEE claims that, at the very least, this "technology transfer" should be compensable on quantum merit grounds. However, in its submissions to this Office, NRC did not support or substantiate IEEE's claim.

Because it is not clear that NRC received and accepted a benefit from the activities of the IEEE, the quantum merit theory is inapplicable. Instead, it appears that IEEE incurred substantial expense on the assumption, apparently encouraged by NRC, that an NRC rule would enable it to recoup its investment by way of fees charged accredited laboratories. That this did not come to pass does not provide a legal basis for turning what was essentially a calculated business risk into a Government subsidized venture.

Accordingly, we affirm our decision B-212529, May 31, 1984, in which we concluded that the NRC is not authorized to reimburse the IEEE for expenses incurred by the IEEE in preparing to carry out the abandoned laboratory accreditation program.



Acting Comptroller General
of the United States